

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED LAUNCH ALLIANCE, LLC,  
9100 E. Mineral Circle, M/S U6003  
Centennial, Colorado 80112

and

UNITED LAUNCH SERVICES, LLC,  
9100 E. Mineral Circle, M/S U6003  
Centennial, Colorado 80112

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF THE  
AIR FORCE, SPACE AND MISSILE  
SYSTEMS CENTER,

Headquarters, Space and Missile  
Systems Center (AFSPC)  
Los Angeles Air Force Base  
483 N. Aviation Blvd.  
El Segundo, California 90245-2808

Defendant.

C.A. No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**  
**(Reverse FOIA Action)**

Plaintiffs, United Launch Alliance, LLC (“ULA”), and United Launch Services, LLC (“ULS”), allege for their Complaint for Declaratory and Injunctive Relief as follows:

**PARTIES**

1. ULA is a Delaware limited liability company with its headquarters and principal place of business in Centennial, Colorado.

2. ULS is a Delaware limited liability company with its headquarters and principal place of business in Centennial, Colorado. ULS is a majority-owned subsidiary of ULA.

3. The United States Department of the Air Force, Space and Missile Systems Center (the "Air Force") is an agency within the United States Department of Defense.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of the action under 28 U.S.C. § 1331, in that the action arises under the laws of the United States, including the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552; the Trade Secrets Act, 18 U.S.C. § 1905; and the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. This Court also has jurisdiction under 28 U.S.C. § 2201 and 2202 to issue the requested declaratory relief.

5. Venue in the District of Columbia is proper under 28 U.S.C. § 1391(e).

### **BACKGROUND FACTS**

6. The Air Force and Lockheed Martin Corporation executed Contract No. FA8816-06-C-0002 on February 28, 2006 (the "Contract"). The Contract expires in September 2009, with performance of the Contract occurring, in part, in Centennial, Colorado.

7. On December 1, 2006, Lockheed Martin Corporation and The Boeing Company formed ULA as a joint venture that combined the respective Atlas and Delta Launch Vehicle Programs of these two companies. On December 1, 2006, as part of the formation of ULA, Lockheed Martin Corporation and The Boeing Company licensed all intellectual property they owned, including proprietary information and trade secrets, used in the conduct of the Atlas and Delta launch services business for ULA's use to conduct its business operations. ULA owns any intellectual property created on or after December 1, 2006. The Contract contains a mix of ULA and Lockheed Martin Corporation data.

8. On November 21, 2008, the Air Force approved the novation of the Contract from LMC to ULS. In accordance with the novation, the obligations and rights of the Contract rest with ULS.

9. ULA seeks the relief requested in this Complaint to protect its own interests, and the interests of its subsidiary, ULS. ULA currently is licensed or owns, and is authorized and entitled to protect from disclosure, the information at issue in this case. Further references to ULA hereinafter also shall include ULS.

### **THE FOIA REQUEST**

10. On October 27, 2008, the Air Force notified Lockheed Martin Space Systems Company ("LMSSC") that the FOIA Group, Inc., FOIA Processing Center, had requested the release of portions of the Contract.

11. The Air Force requested LMSSC, and subsequently ULA, to provide a response concerning the releasability of the information in the Contract (the "FOIA Response") prior to October 31, 2008. Upon the request of ULA and LMSSC, the Air Force agreed to two extensions of time to the requested response date. After such extensions, the FOIA Response was due on December 3, 2008.

12. On December 3, 2008, ULA submitted the FOIA Response to the Air Force and objected to the release of portions of the Contract on the basis that the information is confidential commercial or financial information precluded from disclosure under FOIA Exemption 4 and the Trade Secrets Act. 5 U.S.C. § 552(b)(4); 18 U.S.C. § 1905.

13. Specifically, by means of a memorandum and three supporting affidavits, ULA provided detailed objections to the release of labor hours, labor rates, estimated costs and fees, award fees, technical information related to launch vehicles and services, and other information that reveals pricing and business/proposal strategies (the "Protected Information").

14. ULA's FOIA Response applied the facts established by its affidavits to the relevant legal standards and demonstrated to the Air Force that the release of the Protected Information would impair the Air Force's ability to obtain necessary information in the future and was likely to cause ULA substantial competitive harm.

#### **THE AGENCY DETERMINATION**

15. More than seven months after ULA submitted its December 3, 2008 FOIA Response, in a brief letter dated July 8, 2009 (the "Letter"), received on July 13, 2009, the Air Force notified ULA that it disagreed with ULA's position and that the Air Force had determined, with some exceptions, that the Protected Information was releasable to the public.

16. The factual basis and legal analysis in the Letter purporting to support the Air Force determination is summary in nature and fails to justify its conclusion that the Protected Information is not precluded from disclosure under FOIA Exemption 4 and the Trade Secrets Act. The Air Force also did not adequately identify the specific information that it intends to release.

17. In addition, the Letter notified ULA that the Protected Information would be released without notice or further coordination with ULA within 14 days from the date of the letter.

18. On July 17, 2009, in an email (the "Email") from Air Force counsel, ULA was informed that the Air Force had agreed to a short extension so that ULA could supplement its previous FOIA Response. The Air Force agreed that it would not release the Protected Information until after July 31, 2009.

19. On July 24, 2009, ULA submitted a letter supported by two affidavits supplementing its previous FOIA Response and further urging the Air Force to withhold from release the Protected Information.

20. On July 29, 2009, the Air Force provided a second letter (the "Second Letter") again determining that the Protected Information is releasable to the public. The Air Force stated in the Second Letter that it still intended to make a release of the Protected Information after July 31, 2009.

21. The Air Force agreed in the Second Letter, however, that if ULA notifies the Air Force by July 31, 2009 that ULA intends to file a complaint in court by August 7, 2009, the Air Force will continue to withhold release of the Protected Information through August 7, 2009. The Air Force further agreed in the Second Letter that, if the Air Force receives notice that ULA has filed a complaint by August 7, 2009, the Air Force will continue to withhold release of the Protected Information pending the outcome of the court action.

22. This complaint satisfies the Air Force's requirement that a complaint be filed on or before August 7, 2009. Accordingly, the Air Force will not release the Protected Information until this litigation is finally resolved.

**COUNT I**  
**(Reverse FOIA)**

23. ULA incorporates paragraphs 1 to 22 of this Complaint as if fully set forth in this Count.

24. ULA's Protected Information is all confidential commercial and financial information exempt from disclosure under FOIA Exemption 4. 5 U.S.C. § 552(b)(4).

25. Disclosure of ULA's confidential commercial information is prohibited by the Trade Secrets Act. 18 U.S.C. § 1905. Accordingly, the Air Force is prohibited from making a discretionary release of the information under FOIA or otherwise.

26. The Air Force decision to release ULA's confidential commercial information is arbitrary and capricious within the meaning of 5 U.S.C. § 706, an abuse of discretion, and not in accordance with law.

27. Pursuant to 5 U.S.C. § 552(b)(4) and 28 U.S.C. § 2201-2202, ULA is entitled to a declaratory judgment and an injunction prohibiting the Air Force from disclosing the Protected Information.

**PRAYER FOR RELIEF**

WHEREFORE, ULA and ULS request that the Court:

- (a) Declare that the Protected Information is confidential commercial and financial information exempt from disclosure under 5 U.S.C. § 552(b)(4), the release of which is prohibited by 18 U.S.C. § 1905;
- (b) Enter a permanent injunction prohibiting the Air Force from making any public release in response to a FOIA request, or otherwise, of the Protected Information;
- (c) Award ULA and ULS their costs; and
- (d) Award ULA and ULS such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Dated: July 31, 2009

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